

SUPPORTING STATEMENT

Definition of a Controlled Foreign Corporation, Foreign Base Company Income, and Foreign Personal Holding Company Income of a Controlled Foreign Corporation

TD 8618

OMB Control Number 1545-1068

1. **CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

A U.S. shareholder of a controlled foreign corporation is subject to current U.S. taxation on the subpart F income of the foreign corporation, which consists of several categories of income. One of the principal categories of subpart F income is foreign base company income, as defined under section 954. Foreign base company income, in turn, consists of several sub-categories of income, also defined under section 954. Those sub-categories include foreign personal holding company income, foreign base company sales and services, shipping, and oil related income. In general, foreign personal holding company income consists of various types of passive income or other "moveable" types of income. These include, for example, interest, dividends, rents, royalties, annuities, and gains from certain property transactions. The gross amounts of foreign base company income are subject to certain special rules and exceptions under section 954, which include the high-tax exception and the de minimis/de maximus rules. Controlling U.S. shareholders must elect the high-tax kickout for that exception to apply.

The final regulations also exclude from foreign personal holding company income gains or losses from certain commodities and currency transactions (and gain or loss from bona fide hedging transactions with respect to these commodities and currency transactions). These transactions must be properly identified on the books and records of the controlled foreign corporation. However, taxpayers may elect to treat all foreign currency gains and losses from certain transactions as foreign personal holding company income, in lieu of complying with the tracing requirements described in the preceding sentence. Further, taxpayers that do not make this election but continue to trace may elect to characterize foreign currency gain or loss that arises from a specific category of subpart F income as gain or loss in that category.

2. **USE OF DATA**

The election procedures and recordkeeping requirements are necessary in order to allow certain income to be excluded from being taxed as subpart F income or to be included in the appropriate category of subpart F income. Without the recordkeeping and elections procedures, neither the U.S. shareholders nor the Internal Revenue Service would know the amount of the controlled foreign corporation's subpart F income.

3. **USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

We have no plans to offer electronic filing. IRS publication, regulations, notices and

letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

We have been unable to reduce the burden for small businesses.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Consequences of less frequent collection on federal programs or policy activities could consist of a decrease in the amount of taxes collected by the Service, inaccurate and untimely filing of tax returns, and an increase in tax violations.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A Notice of Proposed Rulemaking and temporary regulations were published simultaneously in the **Federal Register** on July 21, 1988 (53 FR 27532). A public hearing was held on February 9, 1989. Final regulations were published in the **Federal Register** on September 7, 1995 (60 FR 46500).

We received no comments during the comment period in response to the **Federal Register** notice dated September 26, 2016 [81 FR 66123].

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Business Master file (BMF)” and a Privacy Act System of Records notice (SORN) has been issued for these systems under IRS 22.062 – Electronic Filing Records; IRS 24.030 – Customer Account Data Engine (CADE) Individual Master File; IRS 24.046 - CADE Business Master File (BMF); IRS 34.037 - IRS Audit Trail and Security Records System. The Internal Revenue Service PIA’s can be found at <https://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Burden estimation:

Section 1.954-1(d)(5) of the regulation provides the manner for making the election to exclude from the computation of subpart F income, income subject to a tax rate imposed by a foreign country that is greater than the rate imposed by the United States. We estimate that the section 954(b)(4) election will be made with respect to 18,000 controlled foreign corporations by approximately 14,500 shareholders and that it will take each shareholder approximately 1/6 of an hour to make the election. The total burden is 2,417 hours.

Section 1.954-2(a)(4)(ii) of the regulation provides that a hedging transaction is a bona fide hedging transaction, and the gain or loss from such a transaction will be excluded from foreign personal holding company income, if the hedging transaction is identified in accordance with, and satisfies the recordkeeping requirements of, the provision of section 1.1221-2, and other conditions provided under the regulations are satisfied. Section 1.954-2(g)(2) provides that a foreign currency gain or loss that is attributable to the business needs of a controlled foreign corporation and that is identified on the controlled foreign corporation's books and records as derived from certain specified transactions will be excluded from foreign personal holding company income. We estimate that 18,000 controlled foreign corporations will identify hedging and business needs transactions and that it will take each corporation 2.5 hours to identify those transactions. The total time to identify is approximately 45,000 hours.

Section 1.954-2(g)(3) provides an election to characterize foreign currency gain or loss that arises from a specific category of subpart F income as gain or loss in that category. We estimate that 6,000 controlled foreign corporations will make this election and that it will take 1/6 of an hour to make the election. The total time to make the election is

approximately 1,000 hours.

Section 1.954-2(g)(4) provides that instead of identifying the currency gains or losses that are attributable to the business needs of a corporation, an election may be made to include in the computation of foreign personal holding company income net foreign currency gains or losses attributable to any section 988 transaction and any section 1256 contract that would be a section 988 contract but for section 988(c)(1)(D). We estimate that 12,000 controlled foreign corporations will make the election rather than identifying transactions and that it will take approximately 1/6 of an hour to make the election. The total time to make the election is approximately 2,000 hours.

Total Annual Hours: 2,417 hours + 45,000 hours + 1,000 hours
+ 2,000 hours =50,417 Total Annual Hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There is no estimated cost burden to respondents.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no estimated annualized cost to the federal government.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

There are no exceptions to the certification statement.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.